

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 24053
Plaintiff-Appellee	:	
	:	Trial Court Case No. 2009-CR-2774
v.	:	
	:	
JUSTIN HAMILTON	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 23rd day of December, 2010.

MATHIAS H. HECK, JR., by CARLEY J. INGRAM, Atty. Reg. #0020084, Montgomery County Prosecutor’s Office, Appellate Division, Montgomery County Courts Building, P.O. Box 972, 301 West Third Street, Dayton, Ohio 45422
Attorney for Plaintiff-Appellee

TIMOTHY L. CARLIN, Atty. Reg. #0085457, Law Offices of Isabel Suarez & Associates, 765 Troy Street, Dayton, Ohio 45404
Attorney for Defendant-Appellant

BROGAN, J.

{¶ 1} Justin Hamilton appeals from his conviction in Montgomery County Common Pleas Court of theft of an automobile. His court appointed counsel has filed an *Anders* brief asserting that he could not find any arguable merit to Hamilton’s appeal. Hamilton was provided an opportunity to file his own appellate brief. He

has not done so.

{¶ 2} On August 5, 2009, Stephanie Marsh went to a small bar in Riverside, Ohio, called Hank's Hideout to celebrate her cousin, Amber's, birthday. Marsh drove her cousin Amber, her cousin Nick, and another girl, Amanda, to the bar in her 2003 Pontiac Vibe. She left her purse in the car which she locked. She placed her car keys in her cousin Amber's purse. Later that evening she saw Hamilton whom she had known in high school. A while later, Marsh noticed that her cousin's purse was missing and that Hamilton had left the bar. Marsh searched the bar and could not find Amber's purse which contained her car keys. She went outside the bar and noticed her car was missing. Marsh called the police and told them she suspected Hamilton had taken the purse and her car. She gave them a description of her vehicle.

{¶ 3} Amber reported to the bartender, Brittany Morgan, that her purse had been stolen. When it was reported to her that Justin Hamilton may have stolen the purse she followed him around the bar and noticed him leave with two men. Morgan followed Hamilton outside the bar and saw him drive away in Stephanie Marsh's car. She told police Hamilton stared at her as he drove off in the car.

{¶ 4} Sergeant Dan Arwood of the Fairborn Police located Marsh's stolen vehicle at 372 Wayne Drive in Fairborn. Police determined that Hamilton's daughter lived at a nearby address. Hamilton had just left that address before police discovered the stolen vehicle. The car was towed from the Wayne Drive address.

{¶ 5} Two weeks after the auto theft, Officer Adam Colon of the Fairborn Police Department showed Brittany Morgan a photo spread of six individuals and

Morgan immediately identified Hamilton's photograph as the person she observed steal Marsh's automobile.

{¶ 6} Hamilton did not testify at his trial and a jury found him guilty as charged in the indictment. At sentencing, the prosecutor represented to the court that Hamilton was on federal parole and had a lengthy criminal record. Hamilton did not refute that statement. The trial court sentenced Hamilton to 18 months in prison.

{¶ 7} Hamilton's appellate counsel suggests that trial counsel may have been ineffective in withdrawing a motion to suppress Morgan's pretrial identification of Hamilton. There was nothing from Officer Colon's or Morgan's trial testimony that suggested the photo spread identification was suggestive or that it tainted Morgan's in-court identification of Hamilton.

{¶ 8} We have examined the appellate record and we are unable to find any non-frivolous issues for appeal. We find Hamilton's appeal to be wholly frivolous and we thus Affirm his conviction. See *Anders v. California*, 386 U.S. 738 (1967).

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DONOVAN, P.J., and FROELICH, J., concur.

Copies mailed to:

Mathias H. Heck, Jr.
Carley J. Ingram
Timothy L. Carlin
Justin Hamilton
Hon. Gregory F. Singer